

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**COLLIN COUNTY, TEXAS**

**Plaintiffs,**

**VS.**

**SUNGARD PUBLIC SECTOR, INC.**

**Defendant.**

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**Case No. 4:14CV364**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. August 27, 2015, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant's Partial Motion to Dismiss (Dkt. 37) be GRANTED in part and DENIED in part, that Plaintiff's money had and received claim be dismissed with prejudice for failure to state a claim, and that Plaintiff's negligent misrepresentation and fraud claims be dismissed without prejudice subject to Plaintiff filing an amended pleading that sets forth the fraud and negligent misrepresentation claims with specificity consistent with Rule 9(b)'s requirements.

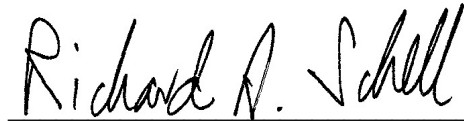
The court has made a *de novo* review of the objections raised by Plaintiff and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendant's Partial Motion to Dismiss (Dkt. 37) is GRANTED in part and DENIED in part. Plaintiff's money had and received claim is dismissed with prejudice for failure to state a claim, and Plaintiff's negligent misrepresentation and fraud claims are dismissed without prejudice subject to Plaintiff filing an amended pleading that sets forth the fraud and negligent misrepresentation claims with specificity consistent with Rule 9(b)'s requirements.

Plaintiff shall file any amended complaint within 14 days of the date of this order.

**IT IS SO ORDERED.**

**SIGNED this the 29th day of September, 2015.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE